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does not embrace those cases in which the requirement is in the interest of persons outside the purview of the BANKRUPTCY ACT. Second, that as to the creditors themselves the clause picks up and adopts all the substantive and procedural limitations of the construction of the statute prescribing the requirement; and if in local practice creditors of a particular class, like general creditors, could not invoke the failure to record, a corresponding disability rests upon the trustee in bankruptcy." After discussing the result sought to be attained by this section of the BANKRUPTCY ACT, namely, the striking down of all secret liens, the court decided that the trustee in bankruptcy might "invoke the remedy of § 60b regardless of the local construction of the statute making a procedural distinction between creditors with a lien and those without." So also in the case of *Hawkins v. Dannenberg Co.*, 234 Fed. 752, Judge LAMBDIN of the District Court for the Second District of Georgia, though compelled to a contrary decision by the authority of *Martin v. Commercial National Bank*, 228 Fed. 651, 143 C. C. A. 173, stated his opinion that under the decision in *Carey v. Donohue*, a provision of the Georgia statute making unrecorded mortgages void *as against lien creditors only* was nevertheless a "requirement" of recording under § 60 of the BANKRUPTCY ACT. This is the same Georgia statute that was under consideration by the Supreme Court in the principal case.

To the contrary, however, are the decision of the Circuit Court of Appeals for the Eighth Circuit in *Martin v. Bank*, *supra* (affirmed by the Supreme Court of the United States in the principal case) and the case of *Emerson-Brantingham Implement Co. v. Lawson*, 237 Fed. 877, decided by the District Court for the Southern District of Iowa, in a case raised under the Iowa act providing for a recording of conditional sale contracts, and holding that the trustee in bankruptcy acquired no rights *as against* previously recorded conditional sale contract because the latter was "required" to be recorded *only as against lien creditors*.

The question seems now to be finally settled in such a manner as to leave little room for doubt, but it is unfortunate that the Act has been so framed as to make possible the result which has now finally been attained. As is said by the court in *Bunch v. Maloney*, *supra*, in arguing against the construction now adopted by the Supreme Court, "It is difficult to perceive much result of consequence in the amendment of 1910 of § 60b. Though twice amended for further effectiveness, it would be doubtful that the section, so construed, would accomplish anything of practical value." And the cogency of this argument seems obvious. It is not the lien creditor that requires protection, but the general creditor, and it is to be regretted that the Supreme Court, in choosing between two possible courses open to it, has again, as in *Carey v. Donohue*, taken the path that gives least power to the trustee in bankruptcy, and most protection to the preferred creditor.

E. H.

JOY-RIDING, SIMPLE AND COMPOUND.—The wrongful use of another's automobile, even though accompanied by a trespassory taking, cannot, if followed by a return to the owner or an abandonment, be easily brought within the

definition of larceny at common law or under the ordinary larceny statutes, because of the requirement of intent to deprive the owner permanently of his property. *Smith v. State*, 146 S. W. 547; *State v. Boggs* (Iowa, 1917), 164 N. W. 759; McCLAIN, CRIMINAL LAW, § 566. Of course, such intent, at the time of taking, might be found in spite of return or abandonment, though it is doubtful whether the bare circumstances stated above would constitute sufficient evidence of that intent to go to the jury. *Rex v. Phillips*, 2 East P. C. 662; *Brennon v. Com.*, 169 Ky. 815; *State v. Slingerland*, 19 Nev. 135; *State v. Davis*, 38 N. J. L. 176; *People v. Flynn*, 7 Utah 378. As a matter of law, intent to abandon at a distance, as distinguished from intent to return, has been held to be sufficient, on the principle that reckless indifference to harmful consequences is equivalent, in law as well as in ethics, to a direct purpose to produce such consequences. *State v. Davis*, *supra*. See also the other cases last above cited. *Reg. v. Prince*, 13 Cox C. C. 138, and *People v. Cummings*, 123 Cal. 269. And, if this position be granted, such abandonment after a trespassory taking would make a case of larceny, on the theory of continuing trespass, even though, at the time of taking, the intent had been to return the property. *Reg. v. Riley*, 6 Cox C. C. 88; *Weaver v. State*, 77 Ala. 26; *Com. v. White*, 11 Cush. 483; *State v. Coombs*, 55 Me. 477. Again, in any of these cases, a charge of larceny of the gasoline consumed might be sustained. By hypothesis, this gasoline has been taken by trespass and carried away, mixed perhaps with more not consumed, and its consumption sufficiently evidences an intent to deprive the owner thereof. A defense based on the theory that defendant never thought of the gasoline might be difficult to dispose of as a matter of law, but could hardly succeed on the issue of fact to the jury. A difficulty arises here as to the description of the property, but an indictment describing it as "gasoline in a quantity to the grand jurors unknown, of the value of twenty cents per gallon" would be sufficient. BISHOP CRIM. PRO., § 553. If a specific quantity were laid in the indictment, a variance in the proof would not, at least under the more liberal authorities, be fatal. *State v. Kreps*, 8 Ala. 951; *Com. v. Griffin*, 21 Pick. 523; *Hagerman v. State*, 54 N. J. L. 104 (semble); *State v. Martin*, 82 N. C. 672. These problems may be further complicated by the circumstances of the taking. If possession of the car was obtained by fraud, the taking could still be made out under the doctrine of larceny by trick. McCLAIN CRIM. LAW, §§ 559, 560. If the owner of the car had delivered possession to defendant as his servant, and he had abused the trust, the taking could be made out under the doctrine that in such a case the delivery vests a mere custody. *Id.* § 556. If, on the other hand, the defendant was a bailee of the car, no larceny could be established. As to whether embezzlement could be made out, that would depend, of course, upon the phraseology of the statutes, but it is doubtful whether the broadest of the embezzlement statutes would be held to cover the case, the difficulty turning chiefly upon the construction of the words "fraudulently" and "convert." McCLAIN, §§ 640, 641; 87 Am. St. Rep. 19, note.

The foregoing theories are fairly comprehensive, yet, as they involve difficulties of proof as well as some propositions of law which might not be

accepted by a conservative court, there is ample justification for legislation dealing specifically with this sort of wrongdoing. Whether the current legislation can pass the ordeal of judicial construction, is not so clear. An Iowa statute provided that, "if any chauffeur or other person shall without the consent of the owner take, or cause to be taken, any automobile or motor vehicle, and operate or drive or cause the same to be operated or driven, he shall be imprisoned," etc. 1913 SUPP. TO CODE, § 4823. In the case of *State v. Boggs* (Oct. 20, 1917), 164 N. W. 759, which was a prosecution under this statute, defendant having obtained prosecutor's permission to use his automobile for 15 or 20 minutes, had driven it to a city eighty miles distant, where it was disabled and left in a garage. The state excepted to the refusal of the trial court to instruct that, "consent given by the owner of the car for a specific purpose or for a stated time, would not be consent to use the car for a different purpose, nor generally, nor for an unlimited time." The Supreme Court overruled the exception and volunteered the statement that, "The statute was not designed to punish one who obtains consent of the owner to take and operate his motor vehicle by misrepresentation or for a fraudulent purpose."

The future course of development can readily be forecast. A statute will be enacted covering the case of abuse of consent by excessive user, and another covering the case of consent procured by fraud. We shall then have a tripartite division of the offense of joy-riding, analogous to the division of larceny, embezzlement, and false pretenses. A few more statutes defining aggravated or compound joy-riding will complete the legal edifice, and further demonstrate the adaptability of the law to changing conditions. E. N. D.